

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

26850

FILE: B-213001**DATE:** November 28, 1983

MATTER OF: Ferguson Electric & Plumbing, Inc. and
Delta Electric Construction Company

DIGEST:

1. Bid stating that "based upon delivery schedule quoted by the manufacturers of the specified equipment, work cannot be completed within this time frame" creates uncertainty as to whether the bidder intends to comply with the IFB completion schedule and renders the bid nonresponsive.
2. To be timely under GAO's Bid Protest Procedures, a protest asserting that it is impossible to meet the IFB delivery schedule must be filed before bid opening.

Ferguson Electric & Plumbing, Inc. and Delta Electric Construction Co., Inc. protest the rejection of their bid in response to invitation for bids (IFB) DLS-43-83 issued by the Immigration and Naturalization Service (INS) for installation of an emergency generator at its Port Isabel Service Processing Center. We deny the protest in part and dismiss it in part.

INS rejected the protesters' bid, and made award to the next low bidder, because they qualified the 180-day project completion schedule specified by the IFB by inserting the following on the bid form:

"Based upon delivery schedule quoted by the manufacturers of the specified equipment, work cannot be completed within this time frame. Submittal of shop drawings and fabrication after approval of drawings quoted by the manufacturers is approximately 330 calendar days."

The protesters state that it was not their intention to take exception to the completion schedule, but rather to bring to INS's attention their concern that the schedule was unrealistic. The schedule could not be met, the

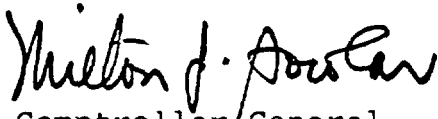
007246

protesters contend, because the switchgear involved must be furnished by the Square D Company which did not quote a delivery date for the switchgear that would enable the protesters to complete the work within the time stated in the IFB.

To be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the invitation. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214, 217 (1979), 79-1 CPD 20. A bidder's actual intention to meet an invitation's material requirements (which include delivery time, Imperial Eastman Corporation, 55 Comp. Gen. 605 (1975), 75-2 CPD 417), cannot render acceptable a bid which on its face modifies the bidder's obligation that otherwise would result from contract award. 49 Comp. Gen. 553, 556 (1970); The Entwistle Company, B-192990, February 15, 1979, 79-1 CPD 112. The statement the protesters included in their bid reflects an exception to the invitation's delivery schedule or, at the least, an attempt to shift to the government the risk that subcontractor delay may cause a delay in performance. It therefore is clear that the protesters qualified their bid and the bid thus is nonresponsive. This part of the protest is denied.

To the extent the protesters' concern is with the impossibility of complying with the 180-day completion requirement, they are concerned with an apparent defect in the IFB, which they knew existed prior to the bid opening date. Section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), requires that such protests be filed prior to bid opening. This aspect of the protest is dismissed as untimely. We point out, however, that INS's report indicates that it expects the awardee to meet the performance schedule.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States